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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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7590

09/25/2002

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EXAMINER

HYLTON, ROBIN ANNETTE

ART UNIT

PAPER NUMBER

3727

DATE MAILED: 09/25/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/822,850

Applicant(s)

DIESTERBECK, FRANK

Examiner

Robin A. Hylton

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 April 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 6.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a) because they fail to show a rib "above the sealing region and between the sealing region in the region of the top edge of the container" as described in the specification at page 16, lines 20-22. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d). A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: 10. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Specification

3. The disclosure is objected to because of the following informality: reference character 20 is referred to as a "sealing web" and a "rib".

Appropriate correction is required.

Claim Objections

4. Claims 1, 14, and 15 are objected to because of the following informalities:

- In claim 1, line 9, "a the" is grammatically incorrect;
- In claim 14, line 2, "rib" is misspelled; and
- In claim 15, line 2, "of" is misspelled.

Appropriate correction is required.

Double Patenting

5. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

6. Claims 1-3,8,14, and 17 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1,8,13,14,20, and 21 of co-pending Application No. 09/822,874. Although the conflicting claims are not identical, they are not patentably distinct from each other because each teaches a container and lid, the container having a collar extending from an upper edge, the lid having a sealing web for sealing against the inner surface of the container mouth, and both the lid and container having snap-fit engagement structure. The claims of the instant invention further locate a sealing member on the container, while the claims of the co-pending application locate the sealing member on one of the container and lid. It would have been obvious to one of ordinary skill in the art at the time

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the invention was made to set forth the sealing member as being one either of the container and lid as in the co-pending application to allow for a broader limitation.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

7. Claims 1,17-20 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1,3,7,15,24-25 of co-pending Application No. 09/822/870. Although the conflicting claims are not identical, they are not patentably distinct from each other because each teaches a container and lid, the lid having a sealing web for sealing against the inner surface of the container mouth, and both the lid and container having snap-fit engagement structure. The claims of the instant invention further include an inner sealing web for engaging the inner, upper surface of a container side wall. It would have been obvious to one of ordinary skill in the art at the time the invention was made to eliminate the inner sealing web from the claims of the co-pending application to allow for a lid sealing lid not requiring an inner sealing web since the lid with or without the inner sealing web will seal an associated container.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 112

8. Claims 7,8,16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is unclear what is intended by "the sealing region of the sealing web is in the region of the vertical height...? Is the sealing region not along at least a portion of the height of the projection?

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The language of claim 8, line 3 is awkward and renders the scope of the claim unclear.

Claim 8 recites the limitation "the vertical height" in line 3. There is insufficient antecedent basis for this limitation in the claim.

Claim 8 recites the limitation "the projections" in line 3. There is insufficient antecedent basis for this limitation in the claim.

Claim 16 recites the limitation "the outer reinforcing rib" in line 3. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 1-10, 13, and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Bakker (FR 2,665,688).

See figures 1 and 2. To the degree claims 7 and 8 are understandable in view of the rejections under 35 USC 112, above, Bakker anticipates the claims.

11. Claims 1, 2, 6, 7, 11, 15, 18, and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Landgraf (EP 600,127).

See figures 1 and 2.

To the degree claims 7 and 8 are understandable in view of the rejections under 35 USC 112, above, Landgraf anticipates the claims.

Regarding claim 11, the claims do not positively recite the sealing web rests on the indentation. Thus, Landgraf anticipates these claims.

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12. Claims 1,6,7,8, and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Philips (US 5,540,349).

See figure 6.

To the degree claim 7 is understandable in view of the rejections under 35 USC 112, above, Landgraf anticipates the claims.

Claim Rejections - 35 USC § 103

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14. Claims 17 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Landgraf in view of Fehres et al. (US 3,696,962).

Landgraf teaches the claimed container except for an elastic sealing member between the top edge of the container and the lid.

Ullman teaches a container having a sealing member between the top edge of the container and the lid.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of a sealing member between the top edge of the container and the lid to the container of Landgraf. Doing so provides an additional sealing arrangement there between.

15. Claims 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Philips in view of Yates, Jr. (US 5,143,219) and Morris, Sr., et al. (US 6,006,942).

Philips teaches the claimed container except for an indentation on which the free end of the sealing web and rest, and an upwardly projecting area.

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Yates teaches a container having an indentation on the inner side wall.

Morris teaches a container having an indentation on the inner side wall and an upwardly projecting area.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of an indentation on the inner wall of the container. Doing so allows the free end of the web to rest thereon and relieve compressive stress on the lid.

Additionally, it would have been obvious to one of ordinary skill in the art at the time the invention was made to further add an upwardly projecting portion for encompassing the free end of the sealing web to maintain the sealing engagement between the lid and container until opening occurs.

16. Claims 14, 16 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Philips in view of Krautkramer (US 6,325,226).

Philips teaches the claimed container except for a radially projecting rib in a region of a top edge of the container.

Krautkramer teaches a container having a radially projecting rib in a region of a top edge of the container.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of a radially projecting rib in a region of a top edge of the container to the container of Philips. Doing so provides reinforcement for applying the lid as well as an additional sealing arrangement between the container and lid.

17. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Philips in view of Ullman et al. (US 3,510,023).

Philips teaches the claimed container except for an elastic sealing member between the top edge of the container and the lid.

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Ullman teaches a container having a sealing member between the top edge of the container and the lid.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of a sealing member between the top edge of the container and the lid to the container of Philips. Doing so provides an additional sealing arrangement there between.

Conclusion

18. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Various containers similar to that disclosed and claimed are cited.

19. In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office Actions directly into the Group at (703) 305-3579. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720 will be promptly forwarded to the examiner.

20. It is called to applicant's attention that if a communication is faxed before the reply time has expired, applicant may submit the reply with a "Certificate of Facsimile" which merely asserts that the reply is being faxed on a given date. So faxed, before the period for reply has expired, the reply may be considered timely. A suggested format for a certificate follows:

I hereby certify that this correspondence for Application Serial No. _____ is being facsimiled to The U.S. Patent and Trademark Office via fax number (703) 305-3579 on the date shown below:

Typed or printed name of person signing this certificate

Signature _____

Date _____

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21. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin Hylton whose telephone number is (703) 308-1208. The examiner works a flexible schedule, but can normally be reached on Monday - Friday from 8:00 a.m. to 2:00 p.m. (Eastern time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young, can be reached on (703) 308-2572.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to Errica Bemby at (703) 306-4005.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1148.

RAH
September 22, 2002


Robin A. Hylton
Patent Examiner
GAU 3727